

**Main Office****10060 Goethe Road****Sacramento, CA 95827-3553****Tele: [916] 876-6000****Fax: [916] 876-6160****Sacramento Regional Wastewater****Treatment Plant****8521 Laguna Station Road****Elk Grove, CA 95758-9550****Tele: [916] 875-9000****Fax: [916] 875-9068****Board of Directors****Representing:****County of Sacramento****County of Yolo****City of Citrus Heights****City of Elk Grove****City of Folsom****City of Rancho Cordova****City of Sacramento****City of West Sacramento****Mary K. Snyder**
*District Engineer***Stan R. Dean**
*Director of Policy and Planning***Prabhakar Somavarapu**
*Director of Operations***Marcia Maurer**
*Chief Financial Officer***Claudia Goss**
Director of Communications

July 19, 2010

Delta Stewardship Council Members
650 Capitol Mall
Sacramento, CA 95814**Re: Draft Administrative Procedures Governing Appeals**

Dear Chairman Isenberg and Council Members:

Agenda item 13 for the Delta Stewardship Council's meeting of July 22-23, 2010, is the consideration of draft Administrative Procedures Governing Appeals. The agenda materials indicate that the Council proposes to formally adopt such procedures at its August meeting.

Sacramento Regional County Sanitation District ("District") recommends that the Council defer action on this item for various related reasons. First, the Council has no immediate need for the procedures. For example, as the procedures relate to Council review of "consistency determinations" of local government agencies, the procedures will not be needed until sometime in 2012 at the earliest. Second, the draft procedures have major implications for all local agencies in the Delta region. It is our belief that few of these agencies are aware of the pending adoption of these procedures. The proposed procedures do not merely restate the provisions of current law, but rather they add to the obligations of local agencies, and purport to provide Council review authority over local agency actions beyond what is provided in existing law. Third, we submit that the regulations exceed Council authority. This issue is deserving of more focused attention, including consideration of the input of all interested local agencies from the Delta region.

We also recommend that the Council make a concerted effort to inform local agencies of these proposed procedures. We understand, of course, that the proposed procedures are publically available, including on the Council's website. As a practical matter, however, it is unlikely that all cities, counties, and special districts throughout the Delta region have made a regular practice of following the activities of the (relatively new) Council, and they may lack resources to do so. They may also not yet be aware that the geographic scope of the Delta Plan will go beyond the primary zone and include the entire Delta. Maintaining currency with Council activities is also made difficult by the short period of time between postings of agendas and Council meetings. Given that the Legislature has apparently exempted the proposed procedures from the Administrative Procedure Act, it is especially important that the Council be deliberate, and take the time to fully evaluate all issues and consider the views of stakeholders. We believe it would serve the Council's objectives of

building relationships with stakeholders if the Council engaged in outreach to the affected local agencies on this important matter, and would be happy to assist the Council in undertaking that effort.

With respect to the content of the proposed regulations, the District provided comments on one significant issue in a letter dated June 23, 2010. We reiterate the substance of those comments immediately below.

A key issue posed by the regulations is whether the Council has veto power over all “covered actions” approved by a state or local agency. We believe this would be a usurpation of local authority, and not consistent with law. While the Council’s authorizing legislation expresses intent that land use actions be consistent with the Delta Plan, it does not appoint the Council as the ultimate adjudicator of whether these or other state and local actions can proceed at all. It is unnecessary to opine or speculate as to what actions may be “covered actions,” but the proposed regulations go too far in the regulation of any such action.

Water Code section 85225.10(a) allows persons who claim that a proposed covered action is inconsistent with the Delta plan to appeal to the Council a state or local agency’s certification of consistency. Under Water Code section 85225.25, the Council, if it concludes the certification is not supported by substantial evidence, may remand the matter “for reconsideration of the covered action[.]”

Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council. (Wat. Code, § 85225.25.)

The statute stops there. It does not provide for still-further and potentially interminable appeals (potentially mingled with litigation), and does not ultimately require local agencies to conform their actions to the dictates of the Council. The proposed regulations, however, would allow for appeals of the revised certification of consistency¹, nullifying the state or local agency’s right to “determine whether to proceed with the covered action.” This is improper.

The District, in its June 23, 2010, comments, recommended that the Council modify paragraph 12 of the regulation (now revised to be paragraph 15) by deleting “, 30 days has elapsed and no person has appealed the revised certification.”

¹ 15. No covered action which is the subject of an appeal shall be implemented unless one of the following conditions has been met:

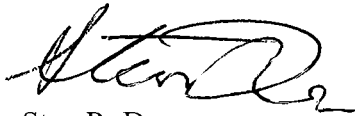
- a) The Council has denied the appeal;
- b) The public agency has pursuant to Water Code section 85225.5 decided to proceed with the action as proposed or modified and has filed with the Council a revised certification of consistency addressing each of the findings made by the Council, *30 days has elapsed and no person has appealed the revised certification*; or
- c) The Council or its Executive Officer has dismissed the appeal for one or both of the following reasons:

Delta Stewardship Council
July 19, 2010
Page 3

The July 12, 2010, draft of the proposed procedures retains the provision of concern, without change. It also introduces new provisions. First, local agencies would be required to submit an indexed administrative record along with their findings of consistency; this is not required by statute. Second, there are new proposed provisions for augmenting the record that was before the local agency (notwithstanding that the statute limits review to material that was in the agency record). There may have been other amendments also, but the current draft does not readily facilitate understanding of what has been changed since the prior draft.

The District urges the Council to engage, and seek the input of, the local agency stakeholders prior to taking any further action on the proposed procedures. If you have any questions or desire further information, please contact Terrie Mitchell at mitchellt@sacsewer.com or 916-876-6092 or me at 916-875-9101 or deans@sacsewer.com

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan R. Dean', with a stylized, cursive script.

Stan R. Dean
District Engineer

cc: Terrie L. Mitchell, Legislative & Regulatory Affairs Manager
Prabhakar Somavarapu, Director of Policy and Planning
Joe Grindstaff, Acting Executive Officer, Delta Stewardship Council